

UNITED STATES BANKRUPTCY COURT
DISTRICT OF MASSACHUSETTS
(Eastern Division)

In re

KC PANORAMA LLC, *et al.*,

Debtor.

Chapter 11

Case No. 21-10827-FJB

(Jointly Administered)

**LIMITED OPPOSITION OF KHRE SMA FUNDING, LLC, TO MOTION
AND APPLICATION OF HDG CONGRESS, LLC, AND HDG STUART, LLC,
TO EMPLOY LAER REALTY PARTNERS AS REAL ESTATE BROKER**

KHRE SMA Funding, LLC (“KHRE”), the holder of first-priority secured claims against KC Panorama LLC, HDG Congress, LLC, and HDG Stuart, LLC (collectively, the “Debtors”), hereby files this limited Opposition to the *Motion and Application of HDG Congress, LLC, and HDG Stuart, LLC, to Employ LAER Realty Partners as Real Estate Broker* [Doc. No. 10] (the “Motion to Employ”). The Motion to Employ is not clear on which properties are being marketed for sale, nor is it clear what commission will be paid to the proposed broker. Regardless of which properties are being listed, the proposed listing price is not sufficient to satisfy the secured claims of KHRE. Finally, the Debtors have provided no information in connection with their selection of LAER Realty Partners as broker or the proposed broker’s expertise in commercial properties. In further support of this Opposition, KHRE represents as follows:

1. On June 4, 2021 (the “Petition Date”), the Debtors filed voluntary petitions for relief under chapter 11 of title 11 of the United States Code (the “Bankruptcy Code”) in the United States Bankruptcy Court for the District of Massachusetts (Eastern Division).

2. Prior to the Petition Date, KHRE and the Debtors entered into written loan

agreements whereby KHRE advanced funds to the Debtors in the original principal amount of \$21,500,000.00 (collectively, the “Loans”).

3. Pursuant to the Loans, the Debtors provided a first-priority mortgage to KHRE on several properties: (a) 13-15 Congress Street, Boston, Massachusetts (“13-15 Congress”); (b) 19-21 Congress Street, Boston, Massachusetts (“19-21 Congress”); (c) 27 Stuart Street #29, Boston, Massachusetts (“Stuart”); and (d) 5 Concord Street, Weston, Massachusetts (“Weston”) (collectively, the “Properties”).

4. According to the Debtors Schedule A/B of assets, pursuant to broker’s price opinions, the aggregate value of the Properties is \$34,651,346.00:

- a. 13-15 Congress—\$14,771,286.40
- b. 19-21 Congress—\$4,482,233.60
- c. Stuart—\$3,695,120.00
- d. Weston—\$11,702,706.00

KHRE does not assent to the values submitted by the Debtor, and expressly reserves all of its rights with respect to the value of the Properties.

5. According to the Debtors’ Schedules, the only other claims against the Properties are asserted by applicable taxing authorities.

6. Prior to the Petition Date, the Debtors were in default pursuant to the Loans, and KHRE had initiated foreclosure proceedings. A foreclosure sale was scheduled for June 9, 2021, with respect to Weston, and June 10, 2021, with respect to the remaining Properties.

7. Upon information and belief, the Debtors filed for bankruptcy protection in order to stop the foreclosure proceedings. According to the Debtors’ Schedules, there are no other significant creditors besides KHRE.

8. As of the Petition Date, KHRE was owed a total of at least \$24,857,818,

comprising \$21,500,000 in outstanding principal, \$3,096,000 in accrued interest, and approximately \$261,318 in late fees, auctioneers' fees, attorneys' fees, and costs, all of which continue to accrue. These figures are estimates only, and do not include certain foreclosure auction expenses that have not yet been determined, as well as ongoing legal and related expenses. KHRE expressly reserves all rights with respect to the calculation and determination of its claim.

9. The Debtors filed the Motion to Employ seeking authority to retain LAER Realty Partners ("LAER"). According to the Motion to Employ, LAER will be engaged to sell 13-15 Congress, 19-21 Congress, and Stuart. The Motion to Employ does not indicate a listing price for the various Properties. The listing agreement attached as an exhibit to the Motion to Employ, however, lists only 13-15 Congress and 19-21 Congress. The proposed listing price is \$19,250,000.

10. Notwithstanding the disagreement between the motion and the exhibit, the proposed listing price is vastly lower than the amount necessary to satisfy the secured claims of KHRE.

11. The Motion to Employ also proposes a commission to LAER Realty Partners ("LAER") of 3.5%. The Motion to Employ goes on to provide for a prospective 2% commission to any buyer's agent if applicable. Although the Motion to Employ indicates that any buyer's agent commission will be deducted from the 3.5% broker's commission, the listing agreement does not appear clear on that point. Regardless, the proposed commission is too high and does not appear competitive or even commercially reasonable for this type of sale.

12. The listing agreement also provides for the exclusive listing with LAER through the end of 2021. Neither the Debtors nor LAER have provide any basis for such a lengthy

exclusive agreement.

13. The Motion to Employ proposes to engage a broker to sell at least two and possibly three commercial properties in the heart of downtown Boston. The Properties are specialized and complex. The Debtors have provided no narrative of LAER's capability, experience, or expertise with such commercial real estate properties, nor have the Debtors provided any explanation of their search and selection process for the proposed broker.

WHEREFORE, for all of the foregoing reasons, KHRE requests that the Court enter an order: (i) denying the Motion to Employ; and (ii) granting such other and further relief as just and necessary.

Respectfully submitted,

KHRE SMA Funding, LLC,

By its attorneys,

/s/ Alex F. Mattera

Alex F. Mattera, BBO No. 641760

Pierce Atwood LLP

100 Summer Street, 22nd Floor

Boston, MA 02110

Telephone: (617) 488-8112

Email: amattera@pierceatwood.com

Dated: June 18, 2021